

REMARKS

The finality of the Action is premature on the basis on the New Action requested a second time September 23, 2004.

The rejection of claim 15 under 35 USC 102 for anticipation by the cited Stanley patent is traversed by the Action itself.

A rejection for anticipation requires every element of the claim to be in the reference.

The distinction between rejections based on 35 U.S.C. 102 and those based on 35 U.S.C. 103 should be kept in mind. Under the former, the claim is anticipated by the reference. No question of obviousness is present. In other words, for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. MPEP 706.02 IV.

Claim 15 required a "... tie layer of foamed plastic between and adhered to the base layer and the innermost layer"

In the Action, "... the examiner admits that Stanley fails to teach the tying layer being adhered to the base layer"

Therefore, the rejection also fails.

The same basis of distinction is now incorporated into independent claims 1 and 22 so that all the claims now traverse the rejection that the Action itself admits a failure.

"No question of obviousness is present" in the rejection. Therefore, it is immaterial to the rejection whether the scope of the claims limit the product to having a strong bond.

Claims 1, 15 and 22 are not anticipated in view of the cited Stanley patent.

However, we would like to repeat our arguments that Stanley (US4640313) is not teaching any extruding against the base layer. Instead, its foam layer is just pushed against the base layer with means of expansion of said foam layer so that "*the expanded foam layer lies against the inside wall of the pipe*", see column 5, lines 61-63. Therefore, Stanley teaches no bounding between the base layer and the foam layer. Furthermore, inside of the pipe that Stanley is lining there is always present water or other material that effectively prevents any

bindings between the pipe and the foam layer, whereby such bounding is not obvious from the patent, either.

The Examiner states that there is no difference whether layers of a tubular product are extruded simultaneously or sequentially (that is coating extrusion). However, it is clear for a person skilled in the art that there is a huge difference in how the layers next to each other stick to each other. For example, US 6,855,787 discloses this clearly: *"Such a multi-layer hose is required to have a strong interlayer adhesion strength in order to avoid delamination during processing or use. As a method to increase the adhesion strength, there may be mentioned, for example, a method wherein a fluorinated resin hose is preliminarily formed, and after carrying out surface treatment, a polyamide resin is coated thereon (e.g. U.S. Pat. No. 5,554,425), or a coextrusion method employing an adhesive resin may be regarded as a low cost method, since the surface treating step is not required."* It is to be note here that Stanley is totally silent bout any surface treating steps. Furthermore, US 6,855,787 discloses that *"However, it is most preferred to employ a coextrusion process wherein the terminal modified polyamide 12 or the like of the outer layer and the fluorocopolymer of the inner layer are coextruded in a molten state and the two are subjected to heat fusion (melt bonding) to form a hose having a double layer structure in one step."*

We cannot do anything but repeat our comments concerning cross-linking: If cross-linking of the polymer material takes place before its contact with the other material (as Stanley teaches), the adhesion ability of the polymer material is actually poorer than without cross-linking. The reason for this is that cross-links make the polymer material more inert or inactive than the same material without cross-links. The Examiner's opinion that "...the cross-lining of the foamed plastic enables the foamed plastic to the innermost layer..." is something new in the art of plastic and polymer technology, and we cannot understand where he has found this kind of knowledge.

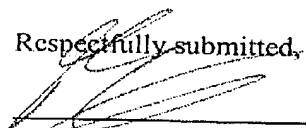
For these reasons, the failed rejection under 35 USC 102 should not be converted into one under 35 USC 103 for obviousness from the Stanley patent.

The above descriptions of the product by process distinctions of the claims is now specified in claim 22. Such specification of the previously claimed distinction is neither a new limitation that would be prohibited after a final Action nor a narrowing limitation that would invoke any Festo-like considerations, but only an emphasis of the unobvious distinctions of the claimed invention.

Claims 1, 15 and 22 are not obvious in view of the cited Stanley patent.

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



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